

**COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Commission Minutes

**Clarion Hotel
320 Hillsborough Street
Raleigh, NC 27603**

Thursday, July 26, 2012

Attending:

Dr. Greg Olley, James R. Bowman, Dr. Richard Brunstetter, Dr. John S. Carbone, Carla D. Cunningham, Debra Dihoff, Frank Edwards, Dr. James W. Finch, Michael R. Grannis, Nancy E. Moore, Beverly M. Morrow, Kevin P. Oliver, John Owen, Pamela Poteat, Elizabeth Ramos, Dr. Marian S. Spencer, Don Trobaugh, David R. Turpin, Carol Vale

Excused Members:

Jennifer Brobst, Phillip A. Mooring, Dr. John J. Haggerty, Dr. Tyehimba A. Hunt-Harrison, Michael Maybee, Anna Cunningham

Other Absences:

Dr. Diana J. Antonacci, Dr. Ranota T. Hall, Matthew Harbin

Division Staff:

W. Denise Baker, Marta T. Hester, Amanda J. Reeder, Susan M. Kelley

Others:

Joe DeLuca, Roger Dillard, Bobby Bryan, Molly Masich, Anca Grozav, Tara Fields, Coryl Dunn

Call to Order:

Dr. Greg Olley, Chairman, NC Commission for Mental Health, Developmental Disabilities and Substance Abuse Services ("Commission") called the meeting to order at 9:35 a.m. He asked for a moment of reflection, welcomed everyone to the meeting and reviewed the ethics reminder. Following introductions, he announced two changes to the agenda: rescheduling approval of the April Rules and Advisory Committee minutes until the October 25, 2012 meeting and the presentation of the fiscal note on the Client Rights rule. Roger Dillard was introduced as a newly appointed Commission member. Dr. Olley also advised that Jim Jarrard is Acting Director at the NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services ("NC DMH/DD/SAS").

Rule 10A NCAC 27G. 0504 – Local Management Entity (LME) Client Rights Committees and Provider Client Rights Committees

Amanda J. Reeder, Rulemaking Coordinator, NC DMH/DD/SAS, presented the fiscal note on Rule 10A NCAC 27G. 0504 on LME Client Rights Committees and Provider Client Rights Committees to the Commission for approval.

Upon motion, second and unanimous vote, the Commission approved the fiscal note for Rule 10A NCAC 27G. 0504 – LME Client Rights Committees and Provider Client Rights Committees.

Rulemaking Training: Agency Rules vs. Agency Policies

Joe DeLuca, Counsel, Rules Review Commission, presented a power point presentation on *Policy and Procedures vs. Administrative Rules* to the Commission. Mr. DeLuca discussed the distinction between a rule and an agency policy as well as an agency's rulemaking authority as outlined in N.C.G.S. § 150B. He also discussed the role of the Rules Review Commission and provided examples of specific versus permissive statutory authority of the Secretary of the NC Department of Health and Human Services and the Commission as set forth in statute.

Mr. DeLuca received the following questions and comments from the Commission:

- John Owen expressed concern regarding the subject matter and content of some of the questions consumers are required to address as part of NC Treatment Outcomes and Program Performance System (NC TOPPS). Specifically, he questioned the agencies' (e.g., NC DMH/DD/SAS) and provider's authority to require consumers to complete the forms or questionnaires; he also inquired whether the information requested is a violation of privacy. Mr. DeLuca advised a rule may be needed to specify the content of the questions and to state how the information collected will be used. Mr. Owen requested a review of the current version of the NC TOPPS forms.
- Frank Edwards asked who has the authority to make the rules regarding the content of the NC TOPPS questionnaire. Mr. DeLuca advised that he does not know who the rulemaking authority is in this case.

Rulemaking Training: Fiscal Impact Analysis Requirements

Anca Grozav, Economic Analyst, Office of State Budget and Management ("OSBM"), provided a presentation on *Fiscal Note Training*. She emphasized to the Commission the importance of complying with the requirements of N.C.G.S. § 150B, the Administrative Procedure Act, and Executive Order 70. Ms. Grozav noted that the fiscal analysis considers both costs and benefits (i.e., savings) that can result from implementing a rule. She also distinguished between three types of fiscal impact potentially posed by rules: de minimis impact; nonsubstantial impact; and substantial impact.

Ms. Grozav received the following questions and comments from the Commission:

- Mr. Owen asked about the timeframe for submitting rules to OSBM. Ms. Grozav explained that the timeframe varies dependent upon the type of rule change but added that OSBM is committed to helping agencies meet their deadline. She also stressed the importance of quantifying the cost and benefits of each rule before submission to OSBM.
- Don Trobaugh suggested that OSBM develop a checklist for agencies and Commissions to follow when examining the fiscal impact of a rule.

Rulemaking Training: North Carolina's Permanent Rulemaking Process

Molly Masich, Codifier of Rules, NC Office of Administrative Hearings, presented to the Commission on the permanent rulemaking process. She reiterated the importance of the rulemaking body examining the fiscal impact of a rule as part of the process as indicated by Ms. Grozav. Bobby Bryan, Counsel, Rules Review Commission, provided an in-depth discussion on the roles and responsibilities of the Rule Review Commission as part of NC's permanent rulemaking process.

Ms. Masich and Mr. Bryan received the following questions and comments from the Commission:

- Mr. Owen asked a series of questions regarding circumstances and requirements to hold public hearings. He suggested that the Commission consider whether a public hearing is warranted for its rules.
- W. Denise Baker, Team Leader, Division Affairs Team, Operations Support Section, NC DMH/DD/SAS, clarified the difference between the public comment period held during the Commission meeting, the 60 day public comment period required before adopting a rule, and public hearings.

Public Comments

- Tara Fields, Benchmarks Association, expressed concern about the lack of time allotted to comment on the fiscal note for Rule 10A NCAC 27G. 0504 – LME Client Rights Committees and Provider Client Rights Committees. Ms. Reeder explained the process by responding that time will be allowed to accept public comments on the rule in accordance with the rulemaking process as outlined in N.C.G.S. § 150B. Comments will be accepted during the 60 day comment period when the rule is published in the NC Register.
- Mr. Owen emphasized the importance of allowing public comment on rules before the Commission during the public comment period. Ms. Baker followed up and reiterated that the public comment period held during the Commission meetings and 60 day public comment period allotted when the rule is published in the NC Register, are two separate issues. She further clarified the comments made by the public during the 60 day public comment period will be reviewed by the Commission before the rule is officially adopted. Ms. Baker also communicated that N.C.G.S. § 150B dictates the protocol all agencies must follow in the rulemaking process, which includes the Commission.
- Dr. Olley accentuated the importance of allowing transparency and openness in the Commissions proceedings.
- Carla Cunningham, Commission member, added that it should be apparent when public hearings will be held to ensure transparency. Ms. Baker noted that the requirements for public hearings are set forth in N.C.G.S. § 150B.

There being no further business, the meeting adjourned at 12:40 pm.